

EXHIBIT 27

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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DARRYL CHALMERS, DARREN CONNORS,
GLENN MENDEZ, JAMES NOVA, and
FATIMA Q. ROSEMOND,

1:20-cv-03389

On behalf of themselves and all
others similarly situated, and
AFSCME DISTRICT COUNCIL 37
LOCAL 2507, on behalf of its
Members

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

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April 29, 2021
11:52 a.m.

DEPOSITION of CITY OF NEW YORK, the
Defendant herein, by STEVEN BANKS, taken by the
attorneys for the Plaintiffs, pursuant to Notice,
held via Web conference at the above date and
time, before Maureen McCormick, a Notary Public of
the State of New York.

1 S. Banks

2 the legal division, and I oversaw the attorneys
3 who represented the city in various legal
4 proceedings.

5 And then as I mentioned in February of
6 2019, I maintained the general counsel role and
7 added first deputy commissioner where I oversaw
8 the city's negotiations, as well as, you know, all
9 the operations of our agency, which includes
10 health benefits, deferred compensation and various
11 other units and divisions.

12 Q. Is it correct that in these duties you
13 have become familiar with contract negotiations
14 with the various unions from at least 2011
15 forward?

16 A. Yes.

17 Q. During the period from 2009 to 2011,
18 were you familiar with and involved in the
19 negotiations with labor unions?

20 A. I was on a more limited basis. I
21 would attend bargaining sessions as a legal
22 representative, and in preparation for arbitration
23 cases or improper labor practice cases, I would
24 become familiar with specific negotiations that
25 were relevant to those litigations.

1 S. Banks

2 Q. And we identified the six topics a
3 little bit earlier.

4 Do you feel like your positions have
5 provided you with information about these topics
6 for the entire period of 2009 forward?

7 A. Yes, to varying degrees. I mean, my
8 primary involvement in these areas has been since
9 2014. I've been the city's lead negotiator for
10 the EMS collective bargaining unit, which includes
11 fire protection inspectors, so that's the area
12 that I'm most knowledgeable about.

13 Q. Have you done anything to prepare for
14 the deposition today?

15 A. Yes.

16 Q. And have you talked with counsel?

17 I don't want to know anything about
18 what you said, but have you talked with counsel
19 about it?

20 A. Yes.

21 Q. Have you talked with anyone else about
22 the deposition today to prepare for it?

23 A. Yes.

24 Q. With whom else have you talked?

25 A. Daniel Pollak, who is currently an

1 S. Banks

2 associate commissioner in my office.

3 Q. And what did you talk with Mr. Pollak
4 about?

5 A. The building inspector collective
6 bargaining in the last round of bargaining which
7 would have been covering the 2010 to 2017 period.

8 Q. And have you talked with anyone else
9 in addition to counsel and Mr. Pollak?

10 A. No.

11 Q. Have you reviewed any documents to
12 prepare for your deposition today?

13 A. Yes.

14 Q. What documents have you reviewed?

15 MS. CROUSHORE: Objection to the
16 extent it calls for documents that we
17 discussed together.

18 Q. I'm not asking for any specification
19 about why you reviewed them, when you reviewed
20 them. Just what documents you reviewed.

21 MS. CROUSHORE: I maintain my
22 objection in terms of the selection of
23 documents that I presented to Mr. Banks.

24 MR. LIEDER: Are you instructing him
25 not to answer?

1 S. Banks

2 something called a new hire minimum salary?

3 A. So, I mean, the end of the
4 negotiations is a collective bargaining agreement,
5 which may cover issues related to a new hire
6 minimum salary or may not.

7 Q. What is meant by a new hire minimum
8 salary?

9 A. So that term, as I understand it, many
10 of our civilian employees throughout the city have
11 what's called a salary range where there's a
12 minimum to a maximum rate of pay that are
13 permissible under the collective bargaining
14 agreement, and then most titles also have what we
15 call a new hire rate, which would be in place for
16 the first two years of employment, and would
17 generally be 15 percent below what we call the
18 incumbent minimum rate.

19 Q. Does that incumbent minimum apply to
20 individuals who have worked two years in one of
21 the titles that is covered by that particular
22 agreement or does it apply to people who have
23 worked two years for the city in any title?

24 A. The latter. Continuously, right? At
25 least two years continuously at any level.

1 S. Banks

2 bargaining agreement, we have, you know, discrete
3 terms of art, and the base salary is the base
4 salary, and those other economic items that you
5 mentioned, which are common, are additional forms
6 of compensation that we just distinguish from
7 salary, you know, for the -- as it's defined in
8 the collective bargaining agreement.

9 Q. But if there is a term that, for
10 instance, after five years of service someone gets
11 an increase of \$1,000, that increase would be
12 reflected in the compensation that they receive
13 every two weeks or however often they're paid?

14 A. Certainly, yes.

15 Q. Are you familiar with the term pattern
16 bargaining?

17 A. Yes.

18 Q. What is meant by pattern bargaining?

19 A. So in the City of New York, we have
20 over 150 separate collective bargaining units, so
21 our approach to -- the city's approach going back
22 to at least the late 1960s has been to offer and
23 settle on contracts with similar or the same
24 economic value for similarly situated units of
25 employees.

1 S. Banks

2 Q. And when you say same economic value,
3 are you talking in terms of percentage increases
4 or are you talking in terms of absolute number of
5 dollars being paid?

6 A. Percentage increases over the term of
7 the contract, not -- not overall dollars spent,
8 because there's a wide variation in the size,
9 right? We have a teachers' unit that's over
10 100,000 employees, and there's a union of
11 horseshoers where there's three people who work
12 for the Police Department putting the shoes on the
13 horses, so it's not about the total dollars spent.

14 Q. And when you talk about the pattern
15 percentage increase, would that also apply to
16 other factors that influence salary, such as a
17 longevity or recurring increment bump?

18 A. So it depends. The two examples that
19 you gave in general are longevity differentials
20 would not automatically go up by a percentage
21 increase, whereas the recurring increment payment
22 would, so that's the main difference between those
23 two items, so it would depend on the nature of the
24 item and what the CBA says as to whether it would
25 go up by whatever the percentage, what we call the

1 S. Banks

2 general wage increase.

3 Q. I want to make sure I understand here.

4 Let's say that the pattern increase
5 from one year to the next is 2 percent, and a
6 particular local that does not currently have a
7 recurring increment adjustment bargains for a
8 recurring increment adjustment.

9 Would that, if that were agreed to --
10 would that be factored into the 2 percent so that,
11 for instance, the city might say, you only get a
12 one and a half percent increase in salary, because
13 we're also going to give you this, or is that
14 something that is not factored in in that type of
15 scenario?

16 A. I think it would be factored in. In
17 your example, if the pattern was a one-year
18 contract worth 2 percent, we might have one unit
19 that gets a 2 percent general wage increase, and
20 we might have another unit that gets a one and a
21 half percent general wage increase and a recurring
22 increment payment that we value at a half a
23 percent, and that would -- you know, we would
24 work -- we have analysts who work very closely on
25 the math, but assuming that those are equivalent,

1 S. Banks

2 they would both be pattern performing contracts in
3 that example.

4 Q. And let's say that -- change the
5 scenario just slightly. You've got a local that
6 did not have -- I'm sorry, that did have a
7 recurring increment provision in their plan, and
8 there is a 2 percent pattern bargaining increase.

9 In that type of scenario, would the 2
10 percent apply to both the salary increase and the
11 recurring increment?

12 MS. CROUSHORE: Objection.

13 A. I think I can answer.

14 So if we agreed on a one-year contract
15 for a 2 percent general wage increase and did
16 nothing else, that title RIPS, recurrent increment
17 payments, would go up by 2 percent.

18 Alternatively, we could also agree
19 that the general wage increase becomes one and a
20 half percent, in which case they get a general --
21 the salaries go up by one and a half percent and
22 the RIPS go up by one and half percent --

23 (Discussion off the record.)

24 (Question read.)

25 A. So if there was a one-year contract

1 S. Banks

2 with a 2 percent general wage increase, and we did
3 nothing else, the recurring increment payments,
4 the schedule would go up by 2 percent.

5 Alternatively, we might agree with the
6 union bilaterally that perhaps there would be a
7 one and a half percent general wage increase, and
8 the recurring increment payments would go up
9 additionally. For example, a thousand dollars on
10 the ten-year RIP and everything thereafter.

11 Q. But in either case, what you're trying
12 to get at, if the pattern bargaining is for a 2
13 percent increase over this one-year period to
14 reach an agreement with the total economic value
15 of the salaries plus these types of adjustments,
16 roughly equalling 2 percent; is that correct?

17 A. I don't think it's quite correct, just
18 because what we're doing is the economic value is
19 the same over the term of the contract, not each
20 year, so if it's a three-year contract that has 2
21 percent raises every year, the overall value is
22 going to be 6 percent compounded to two and two
23 and two. It's not -- each year has to be
24 equivalent.

25 Q. With that qualification, is what I

1 S. Banks

2 said correct?

3 A. Yes, I think so.

4 Q. Now, we've been talking in terms of
5 civilians. I think you used that term a couple of
6 times.

7 There are also various unions that are
8 uniformed; is that correct?

9 A. Correct.

10 Q. And for purposes of collective
11 bargaining, the fire protection inspectors have
12 been treated as non-uniformed?

13 A. Correct.

14 Q. What are examples of uniformed
15 employees?

16 A. Police officers, correction officers,
17 firefighters and sanitation workers and their
18 supervisors, all of their supervisors.

19 Q. The pattern bargaining increases for
20 uniformed employees may be different than for the
21 civilians; is that right?

22 A. Correct.

23 The process is the same, but in most
24 rounds of bargaining the actual value has been
25 different.

1 S. Banks

2 Q. And the uniforms have been higher?

3 A. When they're different, the uniform
4 pattern is higher.

5 Q. Are you aware that earlier the City
6 Council passed a law recognizing the fire
7 protection inspectors as uniformed for collective
8 bargaining purposes?

9 A. I am.

10 Q. Why is it that they are not treated as
11 uniformed in the collective bargaining agreements
12 then?

13 A. I wouldn't say that that's accurate.
14 The effect of City Council law that you referenced
15 means that what I described earlier, where all
16 economic and noneconomic items, and, you know, the
17 entire contract is bargained together, that occurs
18 and has occurred for the EMTs and the fire
19 protection inspectors, et cetera, so we do treat
20 them as uniformed employees.

21 In terms of the value of whatever
22 settlements the city proposes, the City Council
23 did not purport to, nor do they have authority to
24 establish what we should or could offer different
25 groupings of employees, so in terms of the

1 S. Banks

2 economic value that we negotiate, you know, even
3 pattern bargaining itself is not proscribed under
4 the law.

5 Q. Let's turn for a moment to the
6 Department of Buildings. The Department of
7 Buildings has several different titles of
8 inspectors; is that correct?

9 A. Yes.

10 Q. I'm going to refer to them in general
11 as building inspectors, even though I realize that
12 they might have titles like inspector
13 (construction) or inspector (plumbing.)

14 A. Understood.

15 Q. Is it correct that most building
16 inspectors in the Department of Buildings are
17 members of Local 211?

18 A. Yes.

19 Q. And Local 211 is affiliated with the
20 International Union of Operating Engineers, which
21 is part of the AFL-CIO?

22 A. I'm not sure about that. I thought
23 that the umbrella organization was ABI, the Allied
24 Building Inspectors, and 211 is a local of that
25 organization.

1 S. Banks

2 document, you'll see it says, "2007 To 2009
3 Building and Construction Inspectors Agreement."

4 I realize you came on to OLR in 2009.

5 Have you ever seen this particular document?

6 A. Yes.

7 Q. Obviously you haven't scrolled through
8 the whole thing, but are you aware that there was
9 a collective bargaining agreement that was entered
10 into in January 2009 between the City of New York
11 and Local 211?

12 A. Yes.

13 This appears to be a collective
14 bargaining agreement covering the period of
15 December 2007 to December 2009 covering the
16 building inspector union.

17 Q. One of the questions that will come up
18 several different times is you'll see that this
19 agreement was executed partway through the period
20 that it purports to cover, about half the way
21 through it.

22 When an agreement is purporting to
23 offer a period prior to the date that it's
24 executed and covering things, among other things,
25 salary, how is that done retroactively?

1 S. Banks

2 A. We would pay the difference
3 retroactively, and I would say it's overwhelmingly
4 common that an agreement that we reach for a given
5 round of bargaining includes some retroactive
6 period, so in general our office on behalf of the
7 mayor will reach the agreement with the union on
8 all the terms and conditions, including the
9 economic ones, and then we will have it
10 implemented, and if there's retro pay, we would
11 pay that to any affected employees, including --
12 there may be employees who left since, but they
13 would still be entitled to pay under that
14 agreement, and usually that payment is made around
15 60 days after an agreement is reached.

16 Q. Is it made as a lump-sum payment?

17 A. Usually yes, a single amount that
18 would cover all the retroactive pay from the
19 beginning of the contract.

20 Q. Do you know whether in the city's
21 payroll records the amounts are in effect changed
22 so that an employee who was entitled, let's say,
23 to \$41,000 in 2008, but was only paid 40,000,
24 because the agreement wasn't entered till 2009, in
25 that type of scenario, are the payroll records

1 S. Banks

2 that you just scrolled through are consistent with
3 a, you know, significantly reduced in terms of
4 monetary spending and impact proposal.

5 Q. And on the second page of this exhibit
6 that is entitled, "Proposed Phases Per Conference
7 Call, 2/11/2016," you'll see that there is a
8 subheading called, "Phase 1 Inspector Titles."

9 Do you see that?

10 A. I do.

11 Q. And the first point is, "Change the
12 DOB hiring rate to the incumbent rate," and then
13 there is in the right column an overview of steps,
14 "DOB to present budget impact, the OMB
15 consideration and budget funding."

16 Did the DOB present a budget impact
17 from changing the DOB hiring rate to the incumbent
18 rate?

19 A. I don't specifically recall, because
20 as this implies, which I would agree with, that's
21 really OMB, the Office of Management and Budget's
22 role.

23 Q. Would the OLR have any role in
24 considering the budgetary impact of these proposed
25 changes?

1 S. Banks

2 A. So I mean certainly we work alongside
3 our colleagues at OMB, and our focus is on the
4 labor impact more so than the budgetary impact, so
5 our expertise is what will the union say, what
6 will other unions say, what -- how does this
7 affect the gentle fabric of the 150 collective
8 bargaining units that I mentioned earlier, so we
9 certainly are part of those conversations, but I
10 would say that OMB's job is to manage the budget,
11 and OLR's job is to manage labor relations.

12 Q. Do you know whether as a result of the
13 DOB's proposal their DOB hiring rate was changed
14 to the incumbent rate?

15 A. I believe so.

16 Q. And do you know whether that was done
17 in 2016 at the -- approximately the -- or the year
18 that we're now looking at, or did it happen
19 sometime later?

20 A. Yeah, my recollection is that it
21 occurred that year, but it may have been a few
22 months after those initial discussions.

23 Q. Then under 1 (a) it says, "To adjust
24 the DOB active salaries to offset the new
25 incumbent rate."

1 S. Banks

2 scrolling through it so you can see all of it.

3 I know I scrolled through relatively
4 quickly, but have you ever seen the memo that's
5 been marked as Exhibit 11 before? I shouldn't say
6 memo. The email.

7 A. Yes, so I'm very familiar with the
8 memo that's referenced in here, the -- you know,
9 the document that is referred to in the email.

10 I've never seen this email before, but
11 I've definitely seen, and I'm very familiar with,
12 the memo that it's -- that the email is
13 describing.

14 Q. This is the -- or are you referring to
15 the memo from first deputy budget director Kenneth
16 Godiner or the FDM Fuliehan's city personnel
17 policies and procedures memo?

18 A. The latter.

19 Q. Are you familiar at all with the
20 October 31, 2019, compliance memo from first
21 deputy budget director Kenneth Godiner?

22 A. Not particularly. I think at the time
23 I was aware that OMB was going to communicate with
24 the agencies, but I don't think I ever reviewed
25 that document.

1 S. Banks

2 Q. And do you know, did this email or a
3 version of this email with different addressees,
4 go out to each agency, or was this specifically
5 directed to Department of Buildings?

6 A. No, my understanding is it went to
7 every single agency.

8 Q. And there are two bullet points in the
9 second paragraph of this email that, "Employees in
10 the first two years of city service should be paid
11 the applicable new hire salary, and employees with
12 more than two years the city service should be
13 paid the applicable incumbent minimum salary."

14 Is that consistent with what you were
15 just testifying before we called up this
16 particular document?

17 A. Yes, that in each instance it's the
18 general rule that in the first two years you
19 should get the new hire rate, and after two years
20 the general rule is that the employee should be at
21 the incumbent minimum rate.

22 Q. And what is the purpose of the maximum
23 rate if an employee should be at the minimum rate?

24 A. Well, I mean, this memo contemplates
25 exceptions, right, so general rule is that

1 S. Banks

2 employees should be at the incumbent minimum, but
3 if management has flexibility to pay within a
4 salary range, which as I said is consistent with
5 the collective bargaining agreement, then the
6 range would delineate all the acceptable salaries
7 that we could pay without violating the contract.

8 Q. And may agencies seek exceptions not
9 just on an individual by individual basis, but on
10 the basis of a group of employees?

11 A. Yes.

12 Q. Are there also exceptions made for
13 hard to recruit positions?

14 A. So hard to recruit is a term of art,
15 right? And if a title is on the hard to recruit
16 list, that means that the first bullet that you
17 referenced about the new hire salary wouldn't
18 apply, right? Hard to recruit titles, the minimum
19 is the incumbent.

20 In terms of exceptions to the second
21 bullet, it's not a matter of being on the hard to
22 recruit list as a term of art, but ability to
23 recruit is one of the factors that could lead to
24 an exception making sense.

25 Q. And when agencies wish to have

1 S. Banks

2 exceptions made, they need to go to OLR and OMB?

3 A. That's right.

4 Q. And is this policy still in effect?

5 A. Yes.

6 Q. This email is dated November of 2019.

7 Was this the policy before November of 2019?

8 A. I think the policy was the policy
9 beginning in March of 2019.

10 Q. That's when the city personnel
11 policies and procedure memo is dated March 25 --
12 that's what you're referring to?

13 A. It is.

14 Q. Prior to March 25, 2019, was this the
15 policy?

16 A. I would say that this review process
17 that included OLR and OMB was not the policy.

18 I believe that the city's policy
19 should have been consistent with this, but really
20 there was a new level of oversight and enforcement
21 to make sure that was the case.

22 Q. So before March of 2019, there wasn't
23 any oversight of this, or was there oversight, but
24 not OLR and OMB?

25 A. I believe that there are policies that

1 S. Banks

2 go back probably to like the late 1980s or early
3 1990s that talk about the incumbent minimum being
4 used as the default, but prior to March of 2019,
5 OLR and OMB did not have to specifically review
6 each exception, so the effect of that was that
7 before this was implemented agencies had more
8 latitude to determine their own exceptions.

9 Q. And I didn't ask the question very
10 well. Was there someone, some other entity, that
11 was exercising oversight before March of 2019,
12 such as DCAS or some other agency?

13 A. So I would say that prior to this memo
14 that OMB was exercising oversight, but not in this
15 way. In other words, their analysis was based on
16 can the agency budget afford to pay the person
17 this salary.

18 What this memo contemplates and what's
19 still in place is an analysis of whether, even of
20 you can afford to pay a certain salary based on
21 your budget, is it appropriate, and is it
22 consistent with what we should be doing as a city,
23 so OMB exercises some oversight, but it was really
24 a different type of analysis, and no other agency
25 that I'm aware of would have been providing

1 S. Banks

2 oversight.

3 Q. And let's say in a particular agency
4 either some individuals were being paid within the
5 range, but more than the minimum, as of March of
6 2019.

7 Did the agency have to go to OLR and
8 OMB and ask for an exception for that employee or
9 were existing employees grandfathered in?

10 A. It was the latter. We never had any
11 intention of reducing any existing employees'
12 salaries, but the idea would be to right the ship
13 through attrition. If the rule remains in place
14 for a long time, it will be universal.

15 Q. You'll see in the next to last
16 paragraph of this email, the first paragraph on
17 the top of the second page it says, "Lastly, as
18 explained in First Deputy Director Ken Godiner's
19 memo, there will be periodic audits to ensure that
20 agencies are complying with the respective
21 collective bargaining agreements and city hiring
22 rate policies." Do you see that?

23 A. I do.

24 Q. Do you know, are those periodic audits
25 going on?

1 S. Banks

2 they were preparing to make such a request, but I
3 think it's likely that they did. I don't have a
4 specific independent recollection of that.

5 What I do remember is that, you know,
6 in those initial few months in late 2019 and early
7 2020, we got a lot of these, you know, because it
8 was the first time this was really being enforced.

9 We got a lot of these exception
10 requests that we kind of had to wade through.

11 Q. And near the top of the second page
12 you'll see in an email that right -- who is the
13 writer? This Graham Rabinowitsch says, "We do not
14 have dates. We started using the salaries
15 sometime in 2016 for most inspectors."

16 Does that accord with your memory that
17 the salary changes that had been requested by
18 Department of Buildings were made in 2016?

19 A. It does. It's consistent with what we
20 looked at earlier where they talked about hiring
21 within the range.

22 Q. We are going to switch now to the Fire
23 Department and the fire protection inspectors.

24 When we were having the deposition
25 before lunch, at one point you said that there

1 S. Banks

2 was -- you did remember a request being made by
3 the Fire Department or a particular agency of the
4 Fire Department for some increases in salary for
5 fire protection inspectors.

6 What do you remember about that
7 particular request?

8 A. What I recall is that I think it
9 originated from Chief Spadafora, who at the time
10 was the chief overseeing fire prevention, and he
11 obviously had an interest in the compensation
12 levels and morale within his bureau, and there was
13 a specific proposal that the Fire Department
14 shared with me on behalf of Chief Spadafora, and I
15 never understood that to be the Fire Department,
16 you know, the fire commissioner and the Fire
17 Department's position, but that was something that
18 we discussed internally around the time that we
19 commenced bargaining for the EMS unit, which
20 includes the fire protection inspectors.

21 Q. And when you say it was discussed
22 internally, who was involved in the discussions?

23 A. OLR and OMB and the Fire Department.

24 Q. And who from the Fire Department?

25 A. My recollection, I mentioned Chief

1 S. Banks

2 Spadafora; David Zweifler -- that's
3 Z-W-E-I-F-L-E-R -- is their director of labor
4 relations; Steve Rush, who was their assistant
5 commissioner at the time.

6 I don't recall anyone else being part
7 of those conversations.

8 Q. And were the conversations in a single
9 meeting or a series of meetings and phone calls?
10 What was the circumstance?

11 A. I recall one meeting specifically on
12 that topic, but then as I mentioned we were
13 beginning bargaining with the EMS unit at that
14 time, so we also had management caucuses as part
15 of the bargaining sessions, as well, that touched
16 on a whole host of issues related to EMTs,
17 paramedics, fire protection inspectors.

18 Q. When you say you didn't understand it
19 was the position of the Fire Department, what was
20 your understanding of the Fire Department's
21 position?

22 A. I mean, I think in a broad way, the
23 Fire Department and the folks who I was dealing
24 with understand pattern bargaining, and understand
25 that these few hundred employees are within a unit

1 S. Banks

2 of 4,000, and that any changes to compensation
3 would have to be negotiated with the union, so,
4 you know, I don't think they expressed a strong
5 position one way or the other about how fire
6 protection inspector compensation might be
7 adjusted as part of an overall EMS agreement.

8 I think they deferred to us.

9 Q. Let me actually with that background
10 call up a few of the documents, and we will
11 probably get back to the deferred to you, and by
12 us, I assume you mean city OLR?

13 A. And I would add the OMB labor unit to
14 that, too. They're a close part of our, you know,
15 negotiation team.

16 MR. LIEDER: Maureen, could you call
17 up Exhibit 13, please.

18 Q. Mr. Banks, this is an email from a
19 Fred Novello to Steve Ertrachter, copy to Joseph
20 Zavaglia and forwarded to Robert Rampino.

21 It's a one page set of emails, and
22 given that it was just within FDNY, you probably
23 haven't seen this email before, but you'll see in
24 the middle paragraph of the email that David,
25 presumably referring to David Zweifler, can raise

1 S. Banks

2 the starting salary issue with OLR, since the
3 inspectors have not yet reached a labor agreement.

4 Did Mr. Zweifler prior to the
5 negotiation of the labor agreement with 2507 talk
6 with you about starting salaries for fire
7 protection inspectors?

8 A. Yes. I mean, I think that starting
9 salaries is one aspect of the salary schedule and,
10 you know, consistent with my prior answers, right,
11 through Chief Spadafora, the Fire Department, and
12 David brought that issue to OLR, I think it was
13 like in the spring of 2015, and I also mentioned
14 that in the first paragraph here I'm not the Steve
15 that's being referred to, so that wasn't something
16 that was brought up to OLR back at that time.

17 Q. No, I understand. I think that's
18 probably a reference to Steve Rush, but I'm not
19 allowed to testify.

20 Incidentally, do you know Mr. Novello?

21 A. Yeah, I knew him a little bit. He
22 worked for Steve Rush in the -- in the Fire
23 Department's budget office.

24 Q. Did the department ever inform you
25 that it was having difficulty recruiting fire

1 S. Banks

2 protection inspectors?

3 A. I don't recall that being emphasized
4 or brought as part of the discussion.

5 Q. Did it inform you that it was having
6 trouble retaining fire protection inspectors?

7 A. Same answer. I do not recall that
8 being -- you know, I don't recall that being
9 emphasized or brought by the Fire Department as
10 part of those discussions.

11 MR. LIEDER: Maureen, could we put
12 away Exhibit 13 and call up Exhibit 14,
13 please.

14 Q. Mr. Banks, you'll see that this is an
15 email from Chief Spadafora to Mr. Zweifler, dated
16 April 2015, and let me just scroll through it. I
17 don't expect to you read every word, but so you
18 have an idea of what's in this memo.

19 Mr. Banks, have you ever seen the
20 memorandum that's been marked as Exhibit 14?

21 A. So I don't specifically recall reading
22 the memorandum. I may have, but the contents
23 therein are generally consistent with what I
24 described about those conversations in the spring
25 of 2015, and I see this is dated in April of 2015.

1 S. Banks

2 Q. And you'll see that the proposal
3 includes what was called a step pay plan for
4 individuals at the fire protection inspector level
5 or fire protection inspector title, and each level
6 of associate fire protection inspector.

7 Was it your understanding that at this
8 time a step pay plan did not exist for the fire
9 protection inspectors?

10 A. Correct. In general, a title either
11 has a salary range like we've been discussing
12 throughout the day or a step pay plan, which
13 provides automatic increases to base salary.
14 Usually every year. Usually they're not
15 necessarily every year.

16 Q. What's the difference between a step
17 pay plan and a recurring increment recurring --
18 RIP plan?

19 A. The step pay plan refers specifically
20 to the base salary. Again, earlier I was
21 distinguishing between the salary and the
22 additional items.

23 A step pay plan is where the actual
24 base salary changes based on years of service, and
25 so separate and apart from the general wage

1 S. Banks

2 increases that I discussed earlier, people
3 progress up an -- progress up each year, I would
4 say.

5 Q. And do some job titles have step pay
6 plans like this?

7 A. Yes.

8 Q. Can you give me examples of titles
9 that do have step pay plans?

10 A. Teachers, police officers, traffic
11 enforcement agents. There are a variety, a number
12 of titles that have a step pay plan where
13 basically everybody in the first year has to earn
14 the same salary, everybody in the second year,
15 right?

16 There is no -- we talked about
17 different things like merit pay, right? There is
18 no merit pay in a step pay plan. There is a
19 specific salary based on years of service.

20 Q. And when you met with Mr. Zweifler and
21 Spadafora and Rush, did you discuss a proposed
22 step pay plan?

23 A. I think they did. Chief Spadafora
24 did.

25 Q. And what was Mr. Zweifler and Mr.

1 S. Banks

2 Rush's attitudes for it?

3 A. I guess I thought that they -- that
4 they better understood how the collective
5 bargaining process worked and were relatively
6 neutral, I would say.

7 Q. Did you or people under you reach out
8 to anyone else within the Fire Department, such as
9 the commissioner or HR, to see what their
10 attitudes were to a proposed step pay plan?

11 A. I didn't. I didn't, nor am I aware of
12 any of our staff specifically reaching out to the
13 Fire Department. Just going back to a few answers
14 ago, we definitely talked about all sorts of
15 compensation issues in caucuses at bargaining
16 sessions for EMS that started in May of 2015, and
17 Steve Rush was there, David Zweifler, probably HR
18 representatives and EMS staff, and so issues like
19 this may have been discussed in that forum, but we
20 didn't call the commissioner about this.

21 Q. You had said that the representatives
22 of the Fire Department were willing to defer to
23 you, to OLR, on what to propose if anything along
24 these lines.

25 In the negotiations, did OLR and the

1 S. Banks

2 city propose a step pay plan to the union?

3 A. I think the union proposed a step pay
4 plan for us, and we discussed how to respond and
5 react to that.

6 MR. LIEDER: I'm going to take things
7 out of order. Could we call up 16, please.

8 MS. CROUSHORE: Before you move on to
9 this document, I'm not sure if you said this
10 already. I just want to say it for the
11 record.

12 This is also an internal FDNY document
13 that has no OLR, you know, notice or
14 anything on it.

15 MR. LIEDER: Right. I agree.

16 Q. Mr. Banks, I marked as Exhibit 16 an
17 email chain, which also is completely within the
18 Fire Department, but because you have mentioned
19 that the union brought up a step pay plan, I
20 wanted to see if this is what you were referring
21 to.

22 You'll see that Mr. Zweifler wrote an
23 email to Mr. -- to Chief Spadafora on November 27,
24 2015, which is the first email in the chain, and
25 why don't you read through it and I will then want

1 S. Banks

2 to see if this accurately reflects your memory of
3 what was proposed.

4 A. Okay, I've reviewed it, and it does
5 accurately comport with my memory from the
6 bargaining.

7 Q. And what position did the city take in
8 response to this proposal from the union?

9 A. We indicated that any increases for a
10 given title, in this case the FPI and AFPIs, would
11 have to be funded within a pattern contract, so we
12 would cost it out, and it would be included in the
13 package, in the economic package.

14 Q. And what was the union's response to
15 that?

16 A. Ultimately -- and I think this was a
17 little bit later -- like probably in the spring of
18 2016, they dropped it.

19 Q. Did they at all push to try to argue
20 that the fire protection inspector should receive
21 something more than the pattern bargaining?

22 A. So there were a couple of other items
23 that I would consider falling within that
24 category. I think that ultimately we agreed to
25 equalize some benefits, like an annuity payments

1 S. Banks

2 and uniform allowance payments, for the FPIs with
3 what the EMTs and paramedics got, and we also
4 changed the length of the workweek for the FPIs as
5 part of the overall agreement, so they insisted on
6 some items, but they didn't really insist on their
7 salary schedule proposal that it come out in the
8 fall of 2015.

9 Q. Is one of the considerations that the
10 OLR has in negotiating a comparison of the pay of
11 individuals in particular titles with the pay of
12 employees in other titles that have similar job
13 responsibilities?

14 A. I would say that we would take into
15 account the salary levels if the job duties and
16 qualifications are the same or very similar.

17 Q. At any point during the negotiations,
18 did the union argue that there were individuals
19 who had similar job duties, but were being paid
20 more than the fire protection inspectors?

21 A. The only context that I recall that
22 coming up in was, as I mentioned, the union
23 demanded, and we ended up agreeing to a change in
24 the length of the workweek, and I do recall the
25 union bringing up that what they viewed as other